



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2022-0403; FRL-9833-01-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of two proposed consent decrees: one would resolve all claims in *Concerned Citizens of St. John, et al. v. Regan*, No. 21-cv-03063-TNM (D.D.C.) (“CCSJ Matter”), as well as the same claims brought in *Environmental Integrity Project, et al. v. Regan*, No. 20-cv-03119-TNM (D.D.C.) (“EIP Matter”), and the second proposed consent decree would resolve all other claims in the EIP Matter. The two cases are now consolidated, and the Environmental Protection Agency (“EPA” or “the Agency”) is providing notice of these two proposed consent decrees that would resolve all claims in both cases by establishing deadlines for EPA to take proposed and final actions on, in the first consent decree, the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for the Group I Polymers & Resins (“P&R I”) source category, and in the second, certain New Source Performance Standards (“NSPS”) and NESHAP specified in that decree.

DATES: Written comments on the two proposed consent decrees must be received by **INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2022-0403, online at <https://www.regulations.gov> (EPA’s preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional

information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Hali Kerr, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency, telephone (202) 564-2286; email address Kerr.Hali@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decrees

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2022-0403) contains a copy of the two proposed consent decrees. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the two proposed consent decrees and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

II. Additional Information about the Proposed Consent Decrees

On October 29, 2020, Plaintiffs Environmental Integrity Project, Clean Air Council, Air Alliance Houston, Chesapeake Climate Action Network, Earthworks, Environment America, Environment Texas, Hoosier Environmental Council, PennEnvironment, and Texas Campaign for the Environment (collectively, “EIP Plaintiffs”) brought the EIP Matter in the United States

District Court for the District of Columbia. EIP Plaintiffs filed a third amended complaint on December 10, 2021, alleging that the EPA failed to perform certain non-discretionary duties to review and, where appropriate or necessary, revise the flare control device requirements in the General Provisions for NSPS and NESHAP. They alleged in the alternative that EPA failed to review and, where appropriate or necessary, revise the NSPS for nine source categories and the NESHAP for eight source categories, including P&R I, that cross reference the flare control device requirements.

On November 18, 2021, Plaintiffs Concerned Citizens of St. John, Louisiana Environmental Action Network, and Sierra Club (collectively, “CCSJ Plaintiffs”) brought the CCSJ Matter in the United States District Court for the District of Columbia. CCSJ Plaintiffs filed a first amended complaint on March 30, 2022, alleging that EPA failed to perform its obligations under the CAA to review, and revise as necessary (taking into account developments in practices, processes, and control technologies) the P&R I NESHAP at least every 8 years. On March 31, 2022, based on the P&R I claims in both cases, the Court granted a joint motion to consolidate the two cases, with the EIP Matter as the lead case.

Pursuant to CAA section 113(g), EPA is providing notice of two proposed consent decrees that together would resolve all claims in the now consolidated EIP Matter and CCSJ Matter. One of the two proposed consent decrees would establish deadlines for EPA to take proposed and final actions pursuant to CAA section 112(d)(6), 42 U.S.C. 7412(d)(6), for the NESHAP for the source categories regulated under P&R I, 40 CFR part 63, subpart U (“Joint P&R I Consent Decree”). The Joint P&R I Consent Decree would require by March 31, 2023, that EPA sign for publication a proposed rule containing all “necessary” revisions to the P&R I NESHAP under section 112(d)(6) of the Act (“taking into account developments in practices, processes, and control technologies”), and that EPA take final action by March 29, 2024. The proposed Joint P&R I Consent Decree would resolve all claims in the CCSJ Matter and the same claims brought in the EIP Matter.

The second proposed decree, which would resolve all remaining claims in the EIP Matter, would establish deadlines for EPA to take actions on one NSPS and two NESHAP that cross reference flare control device requirements (“Flare Consent Decree”). The Flare Consent Decree would establish deadlines for EPA to take certain proposed and final actions. Specifically, the Flare Consent Decree would require that EPA sign the following: a proposed action under CAA section 111(b)(1)(B) on the NSPS for Volatile Organic Liquid Storage Vessels, 40 CFR part 60, subpart Kb, by September 29, 2023, and a final action by September 30, 2024; a proposed action under CAA section 112(d)(6) on the NESHAP for Epoxy Resins Production and Non-Nylon Polyamides Production (“P&R II”), 40 CFR part 63, subpart W, by March 31, 2023, and final action by March 29, 2024; and a proposed action under CAA section 112(d)(6) on the NESHAP for Marine Tank Vessel Loading Operations, 40 CFR part 63, subpart Y, by December 19, 2025, and final action by December 19, 2026.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to either or both of the two proposed consent decrees. EPA or the Department of Justice may withdraw or withhold consent to either or both of the two proposed consent decrees if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information about Commenting on the Proposed Consent Decrees

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2022-0403, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written

comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

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